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**LOCAL RULES OF MEDIATION - ARBITRATION AND SETTLEMENT OF THE  
U. S. COURT OF APPEALS FOR THE THIRD CIRCUIT**

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**L.A.R. 33.0 APPELLATE MEDIATION PROGRAM**

**33.0 Appellate Mediation Program**

Appeals in civil cases and petitions for review or for enforcement of administrative action filed in this Court may be referred to the Appellate Mediation Program to facilitate settlement or otherwise to assist in the expeditious handling of the appeal or petition. A Special Master shall serve as the Program Director and, in cooperation with the Clerk, shall manage the Appellate Mediation Program. Mediations will be conducted by a Senior Judge of the Court of Appeals, a Senior Judge of a District Court, the Special Master, or other person designated pursuant to Rule 48, F.R.A.P. Parties may confidentially request mediation by telephone or by letter directed to the Special Master. In all cases, however, the Special Master will determine which cases are appropriate for mediation and will assign the matter to a mediator.

**33.1 Eligibility for Appellate Mediation Program**

All civil appeals and petitions for review or for enforcement of agency action shall be eligible for referral to the Appellate Mediation Program except: (1) original proceedings (such as petitions for writ of mandamus); (2) appeals or petitions in social security, immigration or deportation, or black lung cases; (3) prisoner petitions; (4) habeas corpus petitions or motions filed pursuant to 28 U.S.C. Sec. 2255; (5) petitions for leave to file second or successive habeas petitions; and (6) pro se cases. In all cases eligible for appellate mediation, the appellant or petitioner shall file with the Clerk, within ten (10) days of the docketing of the appeal with service on all parties, an original and two (2) copies of a Civil Appeals Information Statement and a Concise Summary of the Case, on forms to be supplied by the Clerk. Appellant shall attach to the Concise Summary of the Case copies of the order(s) being appealed and any accompanying opinion or memorandum of the district court or agency. In the event the order(s) being appealed or any accompanying opinion or memorandum adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge, the report and recommendation shall also be attached. In addition, any Judge or Panel of the Court may refer to the Special Master any appeal, petition, motion or other procedural matter for review and possible amicable resolution.

**33.2 Initial Screening and Deferral of Briefing for Cases Selected for Mediation**

The Clerk will provide the Special Master with a copy of the judgment or order on appeal, any opinion or memorandum issued by the District Court or agency, appellant's Civil Appeal

Information Statement and Concise Summary of the Case and any relevant motions. Following review of these materials, the Special Master may refer an appeal or petition to a Senior Judge, himself or herself, or such other person designated pursuant to Rule 48, F.R.A.P. for mediation. The Special Master shall advise the parties, the chosen mediator, and the Clerk of the referral.

If a case is referred to mediation, a briefing schedule shall be deferred during the pendency of mediation unless the Court or Special Master determines otherwise. A referral to mediation shall not, however, defer or extend the time for ordering any necessary transcripts.

If a case is not accepted for mediation, or if accepted but is not resolved through mediation, it will proceed in the appellate process as if mediation had not been considered or initiated.

### 33.3 Referral of Matters to Mediation by a Judge or Panel of the Court

At any time during the pendency of an appeal or petition, any Judge or Panel of the Court may refer the appeal or petition to the Special Master for mediation or any other purpose consistent with this Rule. In addition, any Judge or Panel of the Court may refer to the Special Master any appeal, petition, motion or other procedural matters for review and possible amicable resolution.

### 33.4 Proceedings After Selection for the Program

#### (a) Submission of Position Papers and Documents

Within fifteen (15) days of the case's selection for mediation by the Special Master, each counsel shall prepare and submit to the mediator a confidential position paper of no more than ten (10) pages, stating counsel's views on the key facts and legal issues in the case, as well as on key factors relating to settlement. The position paper will include a statement of motions filed in the Court of Appeals and their status. Copies of position papers submitted by the parties directly to the mediator should not be served upon opposing counsel. Documents prepared for mediation sessions are not to be filed with the Clerk's Office and are not to be of record in the case.

#### (b) Mediation Sessions

The mediator will notify the parties of the time, date, and place of the mediation session and whether it will be conducted in person or telephonically. Unless the mediator directs otherwise, mediation sessions must be attended by the senior lawyer for each party responsible for the appeal and by the person or persons with actual authority to negotiate a settlement of the case. If settlement is not reached at the initial mediation session, but the mediator believes further mediation sessions or discussions would be productive, the mediator may conduct additional mediation sessions in person or telephonically.

#### (c) Confidentiality of Mediation Proceedings

The mediator shall not disclose to anyone statements made or information developed during the

mediation process. The attorneys and other persons attending the mediation are likewise prohibited from disclosing statements made or information developed during the mediation process to anyone other than clients, principals or co-counsel, and then, only upon receiving due assurances that the recipients will honor the confidentiality of the information. Similarly, the parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion or argument to the Court. Notwithstanding the foregoing, the bare fact that a settlement has been reached as a result of mediation shall not be considered confidential.

(d) Settlement

No party shall be bound by statements or actions at a mediation session unless a settlement is reached. If a settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement, and counsel shall file a stipulation of dismissal of the appeal pursuant to Rule 42(b), F.R.A.P. Such a stipulation must be filed within thirty (30) days after settlement is reached unless an extension thereof is granted by the Special Master.

Source: New rule

Cross-references: None

Committee Comments: None

